Petition

81-2036

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NO. ~~81-328~~

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1981

JERRY BENNETT, Jr.
Petitioner

vs.

STATE OF ALABAMA
Respondent

PETITION FOR A WRIT OF CERTIORARI

TO ~~THE SUPREME COURT AND~~ THE COURT

OF CRIMINAL APPEALS OF ALABAMA

GEORGE L. BECK
ATTORNEY FOR PETITIONER

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QUESTION PRESENTED

WHETHER PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS DENIED HIM BY INEFFECTIVE ASSISTANCE OF COUNSEL.

PARTIES

In the Circuit Court of Houston County, Alabama, the Court of Criminal Appeals of Alabama, and the Supreme Court of Alabama, the parties were: Jerry Bennett, Jr., petitioner herein, and the State of Alabama, respondent herein.

TABLE OF CONTENTS

	page
QUESTION PRESENTED.....	i
PARTIES	i
TABLE OF CASES.....	ii
TABLE OF PROVISIONS	1
OPINIONS BELOW	1
JURISDICION	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS	4
ARGUMENT	6
CONCLUSION.....	10
CERTIFICATE OF SERVICE	11

TABLE OF CASES

page

Mac Kenna v. Ellis, ... 7
280 F. 2d 592, 599 (5th Cir.1960)
writ den. 368 U.S. 877 (1961)

TABLE OF CONSTITUTIONAL PROVISION AND STATUTORY PROVISION

This case involves the Sixth and Fourteenth Amendments to the Constitution of the Unites States.

OPINIONS BELOW

The conviction of the Petitioner was affirmed by the Alabama Court of Criminal Appeals on November 24, 1981, without an opinion. The Alabama Supreme Court denied a timely petition for Writ of Certiorari on February 26, 1982, without opinion. (A copy of the orders of the Alabama Court of Criminal Appeals reflecting these actions is attached hereto as Appendix A.)

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on February 26, 1982. A timely application for extension of the time in which to file petition for Writ of Certiorari from this Court was filed, and on March 11, 1982, the time for filing this petition was extended to and including April 26, 1982.

CONSTITUTIONAL PROVISIONS INVOLVED

Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

> "...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction of equal protection of the law..."

Amendment Six of the Unites States Constitution reads as follows:

> "In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The Petitioner, Jerry Bennett, Jr., was indicted by the February, 1981, term of the Houston County, Alabama, Grand Jury, for the crime of theft of property, second degree.

Trial of the cause resulted in a jury verdict of guilty. Upon adjudication of guilt by the trial court, petitioner was sentenced to imprisonment in the penitentiary of the State of Alabama for a period of five years.

Appeal was perfected by trial counsel for the petitioner to the Alabama Court of Criminal Appeals.

On November 24, 1981, said Court entered an order affirming the conviction without opinion. Application for rehearing to the Court of Criminal Appeals was overruled. On February 26, 1982, the Alabama Supreme Court denied Petition for Certiorari.

This Petition is submitted to review denial of the Petitioner's right to assistance of counsel.

STATEMENT OF THE FACTS

The facts pertinent to this petition deal with representation by counsel of this petition at the trial of his case and on appeal of his conviction.

The record reflects that trial counsel was retained by the petitioner. Said counsel was subsequently appointed

to represent the indigent petitioner for purposes of the appeal.

No pretrial motions were filed by defense counsel in this case. The record is devoid of any motions filed by trial cousel on behalf of the petitioner . No written requested charges were presented on behalf of petitioner. No witnesses were called on behalf of the petitioner by defense counsel at the trial. As a point of fact, no evidence of any type was proferred as a defense for the petitioner. This fact is compounded by petitioner's belated offer by the petitioner himself of a defense at the sentencing stage of the proceedings.

With regard to the appeal of the conviction, counsel presented identical briefs to both the Court of Criminal Appeals of Alabama and the Alabama Supreme Court.

ARGUMENT

REASONS FOR GRANTING THE WRIT

On behalf of petitioner it is submitted that this Honorable Court should grant this writ to consider the representation of petitioner by counsel. It is further submitted that the facts reveal a denial of petitioner's right to counsel in a prosecution as said representation was ineffective.

These facts reflect that no pretrial motions of any type were filed by counsel on behalf of petitioner. No defense evidence at all was presented. No written requested charges were submitted by trial counsel. An on appeal of the conviction, trial counsel was appointed to represent petitioner on appeal. Counsel on appeal filed the identical brief in both the Alabama Court

of Criminal Appeals and the Supreme Court of Alabama.

Varying interpretations have been given the Sixth Amendments's guarantee of assistance of counsel. Most interpretations have centered around the effectiveness of the assistance rendered by counsel. The Fifth Circuit has established a standard of effectiveness which requires that defense counsel be "reasonably likely to render and rendering reasonably effective assistance of counsel." MacKenna v Ellis, 280 F. 2d 592, 599 (5th Cir. 1960), cert. den. 368 U. S. 877 (1961).

It is urged that this Honorable Court consider the facts of this case in view of the following points:
(1) Was there full and effective

preparation of the petitioner's case? (2) Did trial counsel investigate all available defenses? (3) Did counsel confer with his client as often as necessary? (4) Did Counsel advise petitioner of all of his rights and take all actions, including pretrial motions, to preserve these rights?

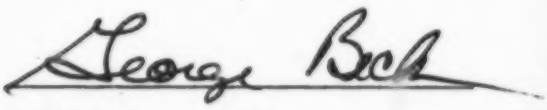
The petitioner requests that this Honorable Court review the facts of his case to determine if his right to effective assistance of counsel has been denied him. This Court should grant the writ to make this determination now, especially when viewed in light of the fact that at no point was this issue presented previously as the same counsel represented petitioner at the trial and in the appeals to the Alabama Supreme Court and the Court of Criminal Appeals.

Petitioner submits that the

Constitution of the United States guarantees the right he asserts, and this Court is the proper tribunal for redress.

CONCLUSION

In conclusion the Petitioner, Jerry Bennett, Jr., respectfully submits that the decisions of the Court of Criminal Appeals and the Supreme Court of Alabama in this case present conflicts with prior decisions of this Honorable Court. For this reason the Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decision of the Honorable Court of Criminal Appeals and the Supreme Court of Alabama and on such review will reverse the decisions of said Courts granting a new trial to the Petitioner.



GEORGE L. BECK
ATTORNEY FOR THE PETITIONER

CERTIFICATE OF SERVICE

I, George L. Beck, a member of the Bar of the Surpeme Court of the United Sates and one of the Attorneys for Jerry Bennett, Jr., Petitioner, do hereby certify that on this _____ day of _____, 1982, I did serve the requiste number of copies of the foregoing on the Attorney for the Respondent, by mailing same to him, first class and postage prepaid and address as follows:

State of Alabama
Charles A. Graddick
Attorney General's Office
250 Administrative Bldg.
64 N. Union St.
Montgomery, AL 36104

George L. Beck

Of Counsel:

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Appendix

APPENDIX A

STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

No. 81-328

4th Div. 923

To the Clerk of the Court of Criminal Appeals of Alabama, Greeting:

WHEREAS, by petition in the Supreme Court of Aabama duly filed on the 11th day of January, 1982, in this Court styled EX PARTE Jerry Bennett, Petitioner, it was prayed that the Record and Proceedings of said Court of Criminal Appeals in a certain cause lately therein pending and proceeding to judgment, appealed from the Circuit Court of Houston County between Jerry Bennett, Jr. and State of Alabama by which judgment it was considered adversely to said Petitioner, be brought before the Supreme Court by writ of certiorari issued

out of this Court to said Court of Criminal Appeals, for review and determination in consonance with law:-
Now it is hereby certified that it was considered and ordered by the Supreme Court on the 26th day of February, 1982, that said writ of certiorari to the Court of Criminal Appeals be and the same is hereby denied. No costs taxed.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 26th day of February, 1982.

APPENDIX B

November 24, 1981

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM 1980-81

4th Div. 923

Jerry Bennett, Jr.

v

State of Alabama

APPEALED FROM THE HOUSTON COUNTY CIRCUIT COURT

JUSTICE BOWEN presiding.

AFFIRMED.

NO OPINION.